

CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
TUESDAY, NOVEMBER 3, 1998 - 7:00 P.M.
MUNICIPAL COURTROOM - 305 MONROE STREET

WELCOME AND CALL TO ORDER - Mayor Rosemary Aultman

INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The invocation was led by Alderman Hisaw followed by the Pledge of Allegiance to the Flag led by Mayor Aultman

ROLL CALL - City Clerk Nelson Byrd

Present: Jehu Brabham - Alderman-At-Large
Tony Hisaw - Alderman Ward 1
Clint Brantley - Alderman Ward 3
Phil Fisher - Alderman Ward 4
Herb Touchton - Alderman Ward 5
Sharbert Lott - Alderman Ward 6
Ken Dreher - City Attorney
Nelson Byrd - City Clerk

Absent: Rodney DePriest - Alderman Ward 2

APPROVAL OF CONSENT AGENDA ITEMS A-Y

MOTION made by Alderman Fisher and **SECONDED** by Alderman Lott to approve Consent Agenda Items A-Y listed on page 825 of this Minute Book Z. Items C and D will serve to advertise favorably the opportunities, possibilities, and resources of the City of Clinton. Quotes listed in item J, L, & X may be found in the office of the City Clerk.

MOTION CARRIED UNANIMOUSLY

APPROVAL OF PRELIMINARY SITE PLAN FOR BANKPLUS

MOTION made by Alderman Touchton and **SECONDED** by Alderman Lott to accept the recommendation from Planning & Zoning for approval of the preliminary site plan of BankPlus located at 217 Clinton Blvd. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF PRELIMINARY SITE PLAN FOR AMERICAN GENERAL FIN.

MOTION made by Alderman Brabham and **SECONDED** by Alderman Hisaw to accept the recommendation from planning & zoning to approve the preliminary site plan for American General Finance located on Springridge Road. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF PRELIMINARY SITE PLAN FOR RUSSELL REFRIGERATION

MOTION made by Alderman Touchton and **SECONDED** by Alderman Brantley to accept the recommendation from Planning and Zoning to approve the Preliminary Site Plan for Russell Refrigeration at 400 Cynthia St. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF ^{BUILDING 7B} ~~HOUSE~~ RENOVATION AT 300 MONROE ST.

MOTION made by Alderman Brabham and **SECONDED** by Alderman Touchton to accept the recommendation from the Historical Preservation Commission and Planning and Zoning to approve the request for exterior renovation at 300 Monroe St. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF AMENDMENT TO SECTION 2101.02(2) OF ZONING ORDINANCE

MOTION made by Alderman Lott and **SECONDED** by Alderman Fisher to adopt that Ordinance and Proof of Publication found on pages 827-829 and 811-813 of this Minute Book II and Ordinance Book II, respectively that amends section 2101.02(C) of the Zoning Ordinance regarding parking regulations for restaurants and similar establishments. **MOTION CARRIED UNANIMOUSLY**

APPROVAL OF DOCUMENTS AND POLICY STATEMENTS FOR 1998 CDBG

MOTION made by Alderman Brantley and **SECONDED** by Alderman Hisaw to approve the Sewer Service Connections Policy Statement found on page 830 of this Minute Book Z. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Brantley and **SECONDED** by Alderman Touchton to approve the Procurement Procedures found on pages 831-833. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Lott and **SECONDED** by Alderman Brantley to approve the Resolution authorizing the Mayor to establish just compensation found on page 834. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Hisaw and **SECONDED** by Alderman Lott to approve the Resolution for Minority and Women owned Business Participation found on page 835. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Touchton and **SECONDED** by Alderman Lott to approve the Resolution authorizing the Mayor and Alderman-at-Large to sign request for cash and the reporting worksheets found on page 836. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Brantley and **SECONDED** by Alderman Lott to approve the Fair Housing Plan found on page 837. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Touchton and **SECONDED** by Alderman Lott to approve the Force Resolution found on page 838. **MOTION CARRIED 5-1. ALDERMAN FISHER VOTING NO**

MOTION made by Alderman Hisaw and **SECONDED** by Alderman Brantley to approve the contract with Sample & Assoc. found on pages 839-845. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Hisaw and **SECONDED** by Alderman Touchton to approve the agreement with Alford Engineering found on pages 846-863. **MOTION CARRIED UNANIMOUSLY**

MOTION made by Alderman Brantley and **SECONDED** by Alderman Lott to approve the contract with Pyle, Dreher, Mills & Dye found on pages 864-870. **MOTION CARRIED UNANIMOUSLY**

APPOINTMENT OF THOMAS BOBO, II TO PARKS & REC ADVISORY BOARD

Upon the recommendation of Mayor Rosemary Aultman, **MOTION** made by Alderman Fisher and **SECONDED** by Alderman Brabham to appoint Thomas Bobo, II to the Parks and Recreation Advisory Board. **MOTION CARRIED UNANIMOUSLY**

ADJOURN 7:25 p.m.

MOTION made by Alderman Brabham and **SECONDED** by Alderman Fisher to adjourn. **MOTION CARRIED UNANIMOUSLY**

Copy of Agenda can be found on pages 825-826 of this Minute Book Z.

APPROVED: Rosemary G. Aultman November 9, 1998
Rosemary G. Aultman, Mayor Date

ATTEST: Nelson Byrd November 9, 1998
Nelson Byrd, City Clerk Date

SEAL:

7E

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF CLINTON BY AMENDING
SECTION 2101.02.C (2)**

WHEREAS, notice of a public hearing to amend Section 2101.02.C (2) of the Zoning Ordinance of the City of Clinton was published in the Clarion Ledger on October 12, 1998; and

WHEREAS, a public hearing on the proposed amendment was held on October 27, 1998, at 7:30 P.M.; and

WHEREAS, there was no adverse public comment on the proposed amendment.

BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Clinton that the Zoning Ordinance of the City of Clinton is amended as follows:

AMENDMENT TO ZONING ORDINANCE

Section 2101.02.C (2) is hereby amended:
By deleting the following in line 3 **gross floor area** and
replacing the deleted portion with **floor area devoted to
patron use**.

This ordinance shall be effective thirty (30) days from and after passage.

**ORDAINED, ADOPTED AND APPROVED BY THE MAYOR AND BOARD
OF ALDERMEN OF THE CITY OF CLINTON, MISSISSIPPI**, at a meeting thereof held
on the 3rd day of November, 1998.

A Motion for adoption was made by Alderman Lott and
seconded by Alderman Fisher. The foregoing ordinance having been first
reduced to writing, and there being no request by the Mayor or any member of the Board
of Aldermen that the Ordinance be read by the City Clerk before the vote was taken, it
was submitted to the Board of Aldermen for the passage or rejection on roll call vote
upon the vote being as follows, to-wit:

Alderman Brabham voted: Aye

Alderman Hisaw voted: Aye

7E

Alderman Depriest voted: absent
Alderman Brantley voted: Aye
Alderman Fisher voted: Aye
Alderman Touchton voted: Aye
Alderman Lott voted: Aye

Whereupon the Mayor declared the Motion carried and the ordinance approved and adopted.

The foregoing Ordinance was approved this the 3rd day of November, 1998.

CITY OF CLINTON

BY: Rosemary G. Aultman
ROSEMARY AULTMAN, MAYOR

ATTEST:

Nelson Byrd
NELSON BYRD, CITY CLERK

(SEAL)

827-870

Proof of Publication

The State of Mississippi

Hinds County

PERSONALLY appeared before me, the undersigned notary public in and for Hinds County, Mississippi,

Shirley Mize

an authorized clerk of THE CLARION-LEDGER, a daily newspaper as defined and prescribed in Sections 13-3-31 and 13-3-32, of the Mississippi Code of 1972, as amended, who, being duly sworn, states that the notice, a true copy of which is hereto attached, appeared in the issues of said newspaper as follows:

Dates of Publication:

Monday, December 7, 1998

Lines:	134
Words:	351
Issues:	1
Total:	\$48.12

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF CLINTON BY AMENDING SECTION 2101.02.C (2)

WHEREAS, notice of a public hearing to amend Section 2101.02.C (2) of the Zoning Ordinance of the City of Clinton was published in *The Clarion-Ledger* on October 12, 1998; and

WHEREAS, a public hearing on the proposed amendment was held on October 27, 1998, at 7:30 P.M., and

WHEREAS, there was no adverse public comment on the proposed amendment

BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Clinton that the Zoning Ordinance of the City of Clinton is amended as follows:

AMENDMENT TO ZONING ORDINANCE

Section 2101.02.C (2) is hereby amended:
By deleting the following in line 3 gross floor area and replacing the deleted portion with floor area devoted to patron use.

This ordinance shall be effective thirty (30) days from and after passage.

ORDAINED, ADOPTED AND APPROVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF CLINTON, MISSISSIPPI, at a meeting thereof held on the 3rd day of November, 1998.

A Motion for adoption was made by Alderman Lott and seconded by Alderman Fisher. The foregoing ordinance having been first reduced to writing, and there being no request by the Mayor or any member of the Board of Aldermen that the Ordinance be read by the City Clerk before the vote was taken, it was submitted to the Board of Aldermen for the passage or rejection on roll call vote upon the vote being as follows, to-wit:

Alderman Brabham voted: Aye
Alderman Hisaw voted: Aye
Alderman Depriest voted: Absent
Alderman Brantley voted: Aye
Alderman Fisher voted: Aye
Alderman Touchton voted: Aye
Alderman Lott voted: Aye

Whereupon the Mayor declared the Motion carried and the ordinance approved and adopted.

The foregoing Ordinance was approved this the 3rd day of November, 1998.

CITY OF CLINTON

BY: /s/ Rosemary G. Aultman
ROSEMARY AULTMAN, MAYOR

ATTEST:
/s/ Nelson Byrd
NELSON BYRD, CITY CLERK

(SEAL)

December 7, 1998

SWORN to and subscribed before me on
12/07/98

My Commission Expires:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE.
MY COMMISSION EXPIRES: Nov. 8, 2000.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Signed

Authorized Clerk
of The Clarion-Ledger

Notary Public

(SEAL)

CITY OF CLINTON
SEWER SERVICE CONNECTIONS POLICY STATEMENT

The City of Clinton proposes to construct sewer system improvements within a delineated neighborhood with Community Development Block Grant Funds.

The City of Clinton will use CDBG monies to provide installation of the sewer service line at no charge to those families in the project area who meet the following criteria:

1. Family must be a homeowner. In the case of a mobile home, the family must own the lot. Home ownership status shall be decided by the City of Clinton if unusual circumstances exist.
2. Family must be classified as low and moderate income. Income criteria will be based on income information provided by the Department of Economic and Community Development dated 10/06/98.
3. Family's house must have an existing toilet.

Adopted this the 3RD day of November, 1998.

Aldermen voting aye: ALL

Aldermen voting Nay: NONE

Nelson Byrd
CITY CLERK

CITY OF CLINTON, MISSISSIPPI
Rosemary J. Quetman
MAYOR

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PROCUREMENT PROCEDURES

The City of Clinton will follow the procedures outlined below in the procurement of third party contracts for all Community Development Block Grant funded projects:

Professional Services Contracts

Solicitation Process:

1. Advertise one (1) time in a newspaper of general circulation in the legal section of the paper. Notice must be in the paper at least seven (7) working days prior to receiving proposals.
2. Send notices by certified mail to two (2) MBE or WBE companies or businesses that specialize in the service required.
3. Send a letter along with a copy of the advertisement to the MS Procurement Center in Gulfport, MS.

Selection Process:

1. The chief elected official will appoint a selection committee consisting of at least three members. Committee members may include the appointing officer, elected members of the governing body, and/or employees of the governmental unit (salaried, hourly, or contractual types). The committee membership will be presented to the governing body for approval. This committee shall review proposals according to the selection factors contained in the Information to the Bidders. Each committee member will complete a rating sheet and assign points based on the review of the proposal. Rating sheets will be tallied and scores ranked in order of highest to the lowest. The committee will then present the ranking to the governing body and recommend that the highest ranked proposal be accepted and approved.

If the rating process should result in a tie between two or more proposals, the committee shall recommend that those professionals be interviewed by the governing body and a selection made after such interviews. This selection shall be confirmed by a majority vote of the governing body.

2. In the case where the City receives only one (1) proposal for the identified service, no rating is necessary if the City determines the bidder to be qualified to do the work and the solicitation requirements identified were met.

3. After the rating is complete, the City will request a contract from the selected consultant. The contract request will include a requirement that the contractor submit with the contract a letter or statement justifying the proposed costs of said services. If the justification is determined acceptable and fair and all environmental conditions are cleared, the City will execute a contract with the consultant.

Construction Contracts over \$10,000

Solicitation Process:

1. Advertise two (2) times in a newspaper of general circulation in the legal section of the paper. Bids can be received fifteen (15) working days after the publication of the second advertisement. National and State holidays do not count as a working day.
2. Same as #2 above.
3. Same as #3 above.

Selection Process:

1. Bids will be received by the City and turned over to the project engineer or architect who will review the bids and offer a recommendation to the Board.
2. Prior to contract award, the City will request clearance from DECD, Community Services Division, on the recommended contractor.

Contracts for Equipment, Supplies, and Materials

Solicitation Process:

1. Advertise two (2) times in a newspaper of general circulation in the legal section of the paper. Bids can be received seven (7) working days after the publication of the second advertisement. National and State holidays do not count as a working day.
2. Same as #2 above.
3. Same as #3 above.

Selection Process:

1. Same process as contracts for construction in excess of \$10,000.

Appeals:

The City of Clinton will not accept any appeals to the final selection unless it is clearly demonstrated that it failed to fully comply with the above described solicitation and selection processes.

Adopted this day the 3rd of November, 1998.

Aldermen voting Aye: All

Aldermen voting Nay: None

Nelson Byrd
City Clerk

Rosemary J. Aultman
Mayor

RESOLUTION AUTHORIZING
MAYOR ROSEMARY AULTMAN
TO ESTABLISH JUST COMPENSATION

WHEREAS, the U.S. Department of Housing and Urban Development has issued Regulations setting forth the policy and requirements relating to acquisition of Real Property for certain HUD - funded and financed projects such as the Community Development Block Grant Programs for Clinton, Mississippi; and,

WHEREAS, said regulations cite the procedure by which the CITY of Clinton makes a determination of Just Compensation prior to negotiations for the purchase of real property, right of way, or easements by establishing a price that the appraiser recommends as the price representing market value and that their value is the full amount so established by the appraiser, and,

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Clinton, that it delegates authority to its Mayor, Rosemary Aultman to review the values established by the appraiser for parcels of real property, right of way, or easements to be acquired under the City's CDBG projects and establish just compensation for said parcels and to increase just compensation when economically feasible.

ADOPTED, this the 3RD. of Nov., 1998.

CITY OF CLINTON, MISSISSIPPI

ATTEST:

Nelson Byrd
CITY CLERK

BY: Rosemary A. Aultman
MAYOR

RESOLUTION ESTABLISHING GOALS FOR MINORITY AND WOMEN OWNED
BUSINESS PARTICIPATION IN THE IMPLEMENTATION OF THE CDBG PROGRAM

Whereas, the City of Clinton has received a Community Development Block Grant from the Department of Economic and Community Development, Division of Community Services; and

Whereas, one of the requirements of the CDBG program is that the City establish goals for MBE/WBE participation in the implementation of their CDBG Project; and

Now Therefore Be It Resolved that the City adopts the goal of 10% participation by MBE's and 5% participation by WBE's in the implementation of its CDBG Project.

Adopted this the 3rd day of NOVEMBER, 1998.

Aldermen voting aye: ALL

Aldermen voting nay: NONE

Nelson Byrd
City Clerk

Rosemary J. Guitman
Mayor

RESOLUTION
AUTHORIZING ROSEMARY AULTMAN, MAYOR
OR JEHU BRABHAM, ALDERMAN AT LARGE, TO SIGN
THE REQUEST FOR CASH AND THE REPORTING WORKSHEETS
UNDER THE STATE OF MISSISSIPPI CDBG PROGRAM
PROJECT NUMBER 8-147-PF-01

WHEREAS, the State of Mississippi has awarded a Block Grant to the City of Clinton under the Community Development Block Grant Program; and,

WHEREAS, the City of Clinton will be responsible for ordering funds from the State of Mississippi to pay all costs incurred in the implementation of block grant activities.

NOW, THEREFORE, BE IT RESOLVED by the City of Clinton it does hereby designate either its Mayor, Rosemary Aultman or Alderman-at-Large, Jehu Brabham, to sign the Request for Cash and the Reporting Worksheet to secure moines under the State of Mississippi Community Development Block Grant Program.

Motion made by Alderman: TOUCHTON; Seconded by
Alderman: LOTT Alderman voting aye: ALL
Alderman voting nay: NONE

ADOPTED this the 3RD day of NOVEMBER, 1998.

CITY OF CLINTON, MISSISSIPPI

ATTEST:

Nelson Byrd
CITY CLERK

BY: Rosemary J. Aultman
MAYOR

City of Clinton Mississippi
Fair Housing Plan

In an effort to promote fair housing in Clinton, the City will implement the following:

1. Provide information on housing programs available for person from low and moderate income families. Persons contacting the City will be directed to the Regional Housing Authority, or any other housing programs that may become available.
2. Participation in the Section 8 Existing Housing Program via the Regional Housing Authority.

Adopted this the 3RD day of Nov., 1998.

Aldermen voting aye: ALL

Aldermen voting nay: NONE

Nelson Byrd
City Clerk

Rosemary D. Guezman
Mayor

RESOLUTION

Whereas, the City of Clinton has received a CDBG Grant from the Department of Economic and Community Development, Division of Community Services; and

Whereas, Paragraph (s) of the Assurances section of the Grant Agreement between the State of Mississippi and the City requires the City comply with Public Law 101-144; and

Now Therefore Be It Resolved that the City of Clinton will prohibit the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

Adopted this the 30 day of Nov., 1998.

Aldermen voting aye: FIVE

Aldermen voting nay: ONE

Nelson Byrd
City Clerk

Rosemary S. Austin
Mayor

**AGREEMENT CONSULTING SERVICES
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

THIS AGREEMENT is entered into this the 3RD day of Nov., 1998, by and between SAMPLE AND ASSOCIATES, INC., herein called the "Consultant", and the CITY OF CLINTON, MISSISSIPPI, herein called the "City".

WITNESSETH THAT:

WHEREAS, the State of Mississippi has approved the City's application for Community Development Block Grant (Project No. 8-147-PF-01) funds under Title I of the Housing and Community Development Act of 1974 as amended; and

WHEREAS, the City needs management and administrative assistance in executing this Community Development Block Grant Program, Project No. 8-147-PF-01; and

WHEREAS, the City desires to engage the Consultant to render certain technical and professional services hereinafter described in connection with the Community Development Block Grant Program, and the Consultant desires to provide said services.

NOW, THEREFORE, the parties hereto mutually agree as follows:

A. EMPLOYMENT OF CONSULTANT

The City hereby agrees to employ the Consultant, and the Consultant hereby agrees to perform services set forth hereinafter in connection with the City's Community Development Block Grant Program which is to be financed in part by grant funds from HUD under Title I of the Housing and Community Development Act of 1974 as amended.

B. SCOPE OF SERVICES

The Consultant shall do, perform, and carry out in a satisfactory and proper manner such work as the City determines is necessary under this program. Specific job tasks that the Consultant will assist the City in performing include, but are not necessarily limited to the following:

1. General Services

- a. Establish a filing system to keep the necessary records:
 - (1) Citizen Participation
 - (2) Environmental
 - (3) Labor Standards
 - (4) Acquisition
 - (5) Relocation
 - (6) Financial Management
 - (7) Other Resources
 - (8) Equal Opportunity
 - (9) General Correspondence
- b. Responsible for overall coordination of project activities.
- c. Attend state monitoring visits, meetings, etc.
- d. Establish and maintain financial records including monthly worksheets
- e. Preparation of the necessary forms to request funds from the State Treasury.
- f. Responsible for insuring adoption of required resolutions in accordance with grant agreement.
- g. Work with local government to obtain necessary right-of-ways and easements in compliance with the applicable acquisition requirements.

2. Labor Standards Administration and Enforcement

- a. Serve as Labor Standards Officer to insure compliance with all applicable labor standard requirements.
- b. Request Wage Rate Determination in accordance with the Davis-Bacon Act.
- c. Ensure the inclusion of all construction documents and bid specifications, the applicable wage decisions and labor standard provisions.
- d. Verify with the State Office the current eligibility status of all contractors and subcontractors to be used on any Title I funded construction prior to award of contract.
- e. Documentation of contractor and subcontractor certification in accordance with HUD Handbook (6500.3) paragraph 5(b).

- f. Assist Engineer in conducting the Pre-construction Conference for each construction contract under the Community Development Program to appraise contractors and subcontractors of their responsibilities and obligations regarding the labor standard provisions obtained in the contract documents.
 - g. Prepare a Preconstruction Conference Report for each conference held in accordance with the labor handbook.
 - h. Examination of "Weekly Payroll Forms" from contractors and subcontractors to insure that these forms meet all necessary requirements as stated in the labor handbook.
 - i. Conduct employee interviews to insure that there are no violations and discrepancies in the existing wage rate and labor classifications.
 - j. Notify the state office of the start of construction of each construction contract in accordance with labor standards.
 - k. File Labor Standards Enforcement Report to State Office as requested
3. Close-out Project
- a. Preparation of close-out report as required by state.
 - b. Assist the City in the selection of auditor, if applicable.

The Consultant shall be available at all times to assist the City in performing such work in a satisfactory and proper manner as the City deems necessary under this program. Specific job tasks that we, as the Consultant, shall perform shall not be limited to the above, but would form to the specific needs of the City.

C. DISPOSITION OF WORK MATERIALS

All contract documents and similar work materials prepared by the Consultant in furnishing the scope of services set forth herein shall be the property of the City.

D. TIME OF PERFORMANCE

The services provided under this Agreement by the Consultant shall continue as long as is mutually agreeable to the parties hereto or until the project is closed out. The terms of the Agreement, specifically the "Scope of Services" and "Compensation" to the Consultant can, however, be reviewed annually and modified as is mutually agreeable to the two parties.

E. TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner his obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and shall be furnished to the Consultant at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Consultant under this Contract shall, at the option of the City, become its property and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

F. TERMINATION FOR CONVENIENCE OF TOWN

The City may terminate this Contract at any time by giving written notice to the consultant of such termination and specifying the effective date thereof. Such written notice shall be furnished the Consultant at least thirty (30) days before the effective date of termination. In the event all finished or unfinished documents and other materials as described above shall, at the option of the City become its property. If the Contract is terminated by the City as provided herein, the Consultant shall be paid for all work completed up to the termination date.

G. TERMINATION FOR CONVENIENCE OF CONSULTANT

The Consultant may terminate this Contract at any time by giving written notice to the City of such termination and specifying the effective date thereof. Such written notice shall be furnished the City at least thirty (30) days before the effective date of termination. In the event of termination, all materials as described above shall become the property of the City. The Consultant shall be paid for all work completed up to the termination date.

H. CHANGES

The City or Consultant may, from time to time, request changes in the terms of this Agreement. Such changes, including any increase or decrease in the amount of compensation due to Consultant, shall be mutually agreed upon by the parties hereto and shall be incorporated in written amendments to this Contract.

I. COMPENSATION DUE TO CONSULTANT

As consideration for the performance of this Contract, the City agrees to pay the Consultant the following lump sum payments. This compensation can be increased with the approval of the City.

General Administration Duties	\$20,500.00
TOTAL	\$20,500.00

Included in this fee is the procurement of up to twenty (20) easements. Any easements obtained over the twenty (20) identified above will be charged at the rate of \$200.00 per easement.

J. METHOD OF PAYMENT

The City will pay the Consultant \$6,500.00 when Construction Contracts are awarded; \$5,000.00 when construction is 50% complete; \$6,500.00 when construction is 100% complete; \$2,500.00 when close-out is approved by DECD.

K. EQUAL EMPLOYMENT OPPORTUNITY

The Consultant will not discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin.

L. INTEREST OF MEMBERS OF CITY AND OTHERS

No officer, member, or employee of the City and no member of its governing body, and no other public official of the governing body, the locality or localities in which the Project is situated or being carried out who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Contract which affects his personal association in which he is, directly or indirectly, interested or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

M. ASSIGNABILITY

The Consultant shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or notation) without prior written consent of the City thereto; provided however, that claims for money due or to become due the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

N. INTEREST OF CONSULTANT

The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Consultant further covenants that in the performance of this Contract no person having any such interest shall be employed.

O. FINDINGS CONFIDENTIAL

Any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Consultant without prior written approval of the City.

P. OFFICIALS NOT TO BENEFIT

No members of or delegate to the Congress of the United States of America and no Resident Commissioner shall be admitted to any share or part hereof or to any benefit to arise herefrom.

Q. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as a duly authorized official of the Department of Economic and Community Development, Division of Community Development, the City, HUD, and/or the Comptroller General of the United States may deem necessary, there shall be made available to the authorized official of the Department of Economic and Community Development, Division of Community Development, the City, HUD, and/or representatives of the Comptroller General for examination of all its records with respect to all matters covered by this Contract and will permit the official of the Department of Economic and Community Development, Division of Community Development, the City, HUD, and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

The Consultant shall keep and maintain books, records and other documents relating directly to the receipt and disbursement of such grant funds; and any duly authorized representative of the Department of Economic and Community Development, Division of Community Development, the City, HUD, and/or the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit and examine all such books, records and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant. Records shall be retained for three (3) years after project closeout.

The Consultant agrees that any duly authorized representative of the Department of Economic and Community Development, Division of Community Development, the City, HUD, and/or the Comptroller General of the United States shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all close-out procedures respecting this Grant.

IN WITNESS WHEREOF, CITY OF CLINTON and the CONSULTANT have executed this Agreement this the 30 day of Nov., 1998.

CITY OF CLINTON, MISSISSIPPI

WITNESS:

Nelson Byrd BY: Rosemary J. Aultman
CITY CLERK MAYOR

SAMPLE & ASSOCIATES, INC.

WITNESS:

Berail Jimenez BY: John Wood Sample
JOHN WOOD SAMPLE, PRESIDENT

21

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

PART I. PARTIES AND PROJECT

THIS AGREEMENT is made on the _____ day of _____ in the year 1998 between the Mayor and Aldermen of the City of Clinton, Mississippi (hereinafter referred to as the "OWNER"), and Alford Engineering (hereinafter referred to as the "ENGINEER") for the Project known as:

1998 CDBG Sewer Improvements more specifically described as:

1. **Clinton-Raymond Road** - Gravity sewer along the west side of the roadway between Countrywood and Olde Vineyard Subdivisions; and
2. **Hobby Farms Road** - Gravity sewer and one (1) pumping station to serve Hobby Farms Road and portions of Old Vicksburg Road and Magnolia Road adjacent to Hobby Farms Road.

The OWNER and the ENGINEER agree as follows:

PART II. ENGINEERING CHARGES

A. In accordance with the Terms and conditions of this Agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER as follows:

A.1 **Basic Services:** As defined in Paragraph 1.1 on the basis of a lump sum of **Twenty-Nine Thousand Thirty-Six Dollars and No Cents (\$29,036.00)**.

Payments shall be made monthly in proportion to services performed so that compensation at the completion of each Phase shall equal the following percentages of total basic compensation:

Preliminary Design Phase	35%
Final Design Phase	35%
Construction Contract Document Phase	5%
Bidding or Negotiating Phase	5%
Construction Phase	20%

A.2 **Additional Services:** As defined in Paragraph 1.2, as follows:

The field surveys needed for design purposes to include planimetric mapping for the pipeline routes, profiles for the sewer lines and metes and bounds plats and descriptions for the lift station site and force main. Payment for these services shall be a lump sum fee of \$10,215.00 paid directly to the Subconsultant, Williford, Gearhart & Knight, Inc.

Other plats/descriptions will not be metes and bounds documents but only "general, over and across" type based on topographic mapping used for sewer design. Compensation for this work shall be charged at the hourly rates listed. Thirty-three (33) plats/descriptions are estimated to be required. The total charges for this work will not exceed \$4,400.00 without justification and Owner's approval.

Other additional services rendered under Part III, Paragraph 1.2 shall be charged at the respective rates for each classification listed:

A.2.1 Principals time and employees time rendered shall be charged at the respective hourly rates which are to be revised annually:

<u>Classification</u>	<u>Hourly Rate</u>
Professional Engineer	\$75.00
Engineering Technician	45.00
Resident Project Representative	45.00
Draftsman	45.00
Clerical	25.00
Survey Crew (3 Men)	85.00
Registered Land Surveyor	60.00

The hourly rates include all supplies, equipment and incidentals normally consumed by each individual in the performance of his work.

A.2.2 Mileage charges allowed under this contract shall not exceed the mileage charges allowed by IRS regulations at the time the charge is incurred or the rate allowed by the State of Mississippi, whichever is lower. No local mileage will be charged.

A.2.3 **Reimbursable Expenses:** As defined in Article 4, shall be paid for at the actual cost billed the ENGINEER plus ten percent (10%). The estimated total shall not exceed \$500.00 without prior approval by the OWNER.

PART III. TERMS AND CONDITIONS

Article 1. ENGINEER'S SERVICES

1.1 Basic Services

The ENGINEER agrees to perform professional services in connection with the Project, including normal civil and structural services related thereto, as set forth below and contained within this Agreement which services shall be provided in a timely manner and with reasonable diligence and without unreasonable delay.

1.1.1 Preliminary Design Phase

Upon the OWNER'S approval of this Agreement, the ENGINEER shall:

1.1.1.1 In consultation with OWNER, determine the extent of the Project.

1.1.1.2 Prepare preliminary design documents consisting of final design criteria, preliminary plan drawings.

1.1.1.3 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.

1.1.1.4 Furnish the above preliminary design documents and present and review them in person with OWNER.

1.1.2 Final Design Phase

After acceptance of the Preliminary Design, ENGINEER shall:

1.1.2.1 On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.1.2.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.1.2.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.1.2.4 Prepare for review and approval by OWNER, his legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.1.2.5 Furnish the above documents and present and review them in person with OWNER.

1.1.3 Construction Contract Documents Phase

After acceptance of the Final Design, the ENGINEER shall:

1.1.3.1 Prepare the required Contract forms including proposal forms and notice to bidders, drawings, technical specifications and other documents which are required to complete the Construction Contract Documents.

1.1.3.2 Furnish to the OWNER engineering data and documents so that the OWNER may secure approval from governmental authorities having jurisdiction over the Project.

1.1.3.3 Advise the OWNER of any adjustments to previous ENGINEER'S Opinion of the Construction Cost when changes in requirements, general market conditions or other conditions so warrant.

1.1.3.4 At the OWNER'S request, assist the OWNER'S legal counsel in connection with his review of the Construction Contract Documents for their legally related aspects.

1.1.3.5 Furnish the Construction Contract Documents for the OWNER'S review and approval.

1.1.4 Bidding or Negotiating Phase

Upon receipt of the OWNER'S written approval of the Construction Contract Documents Phase and latest Opinion of the Construction Cost, and written authorization to proceed with the Bidding or Negotiating Phase, the ENGINEER shall:

1.1.4.1 Assist the OWNER in obtaining bids or negotiating bid proposals, in analyzing bids and proposals, and in awarding the Construction Contract.

1.1.5 Construction Phase

Upon award of any Construction Contract based upon the Construction Contract Documents compiled by the ENGINEER, the Construction Phase of this Agreement shall commence and the ENGINEER shall:

1.1.5.1 Act as the OWNER'S representative with duties and responsibilities and limitations of authority as described in the General Conditions to the Construction Contract. The OWNER shall not modify the Construction Contract Documents without the Written consent of the ENGINEER.

1.1.5.2 Advise and consult with the OWNER during the Construction Phase and the ENGINEER shall issue the OWNER'S authorized instructions to the Contractor.

1.1.5.3 Make periodic visits to the site of the construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the Drawings and the Specifications. On the basis of his on-site observations as an ENGINEER, he shall endeavor to guard the OWNER against apparent defects and deficiencies in the permanent work constructed by the Contractor but does not guarantee the performance of the Contractor. The ENGINEER shall not be required to make exhaustive or continuous on site observations to check the quality or quantity of the construction work. The ENGINEER is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The ENGINEER is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract.

1.1.5.4 Review the Contractor's request for progressive payment, and based upon said on-site observation, advise the OWNER as to the ENGINEER's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the OWNER, a Certificate for Payment in the amount owed the Contractor. The issuance of Certificates for Payment shall constitute a declaration by the ENGINEER to the OWNER, based upon said on-site observations, review and data accompanying the request for payment, that the Contractor's work has progressed to the point indicated; that to the best of the ENGINEER's knowledge, information and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of minor deviations from the Construction Contract Documents and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Certificate for Payment by the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

1.1.5.5 Make recommendations to the OWNER on all claims relating to the execution and progress of the construction work. The ENGINEER's decisions in matters relating to the ENGINEER's designs shall be final.

1.1.5.6 Notify the OWNER of permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have recommendations implemented by the Contractor.

1.1.5.7 Review shop drawings, samples, and other submittals of the Contractor only for general conformance to the design concept of the **Project** and for general compliance with the Construction Contract.

1.1.5.8 Prepare change orders for the **OWNER'S** approval.

1.1.5.9 Conduct a construction progress review related to the Contractor's date of completion; receive written guarantees and related data assembled by the Contractor; and issue to the **OWNER** a Certificate of Final Payment.

1.1.5.10 The **ENGINEER** shall not be responsible for the defects or omissions in the work result of the Contractors, or any Subcontractors, or any of the Contractor's or Subcontractor's employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract.

1.1.5.11 Prepare a set of reproducible record drawings conforming to construction records provided to the **ENGINEER**, made by the Contractor during the construction process.

1.1.5.12 **ENGINEER** shall secure approval of all local, state and federal regulatory agencies having jurisdiction over the activities in this **Project**.

1.2 Additional Services

If authorized in writing by the **OWNER**, the **ENGINEER** agrees to furnish or obtain from others, additional professional services in connection with the **Project**, as set forth below and contained within this Agreement:

1.2.1 Preparation of applications and supporting documents for government grants, loans or advances.

1.2.2 Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

1.2.3 Services due to changes in the scope of the **Project** or its design, including but not limited to, changes in size, complexity schedule or character of construction.

1.2.4 Revising studies, reports, design documents, drawings or specifications which have previously been approved by the **OWNER**, or when such revisions are due to causes beyond the control of the **ENGINEER**.

1.2.5 Preparation of design documents for alternate bids or for out of sequence work requested by the **OWNER**.

1.2.6 Preparation of detailed renderings, exhibits or scale models for the **Project**.

1.2.7 Providing special analysis of the **OWNER'S** needs such as owning and operating analysis, **OWNER'S** special operating drawings or charts, and any other similar analysis.

1.2.8 Providing planning surveys, site evaluations and comparative studies of prospective sites.

1.2.9 Providing any type of field surveys for design purposes, "stake out" of the location of the work, easement surveys, plats, property surveys and any other special field surveys.

1.2.10 Furnishing additional copies of reports and additional prints of Drawings and Specifications in excess of those stipulated in the Agreement.

1.2.11 Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required by the OWNER.

1.2.12 Additional services when the Project involves more than one Construction Contract, or separate equipment contracts.

1.2.13 Preparing special change orders when requested by the OWNER which are not within the scope of Article 1. "ENGINEER'S SERVICES," Paragraph 1.1.5.8.

1.2.14 Making a review of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the Construction Contract.

1.2.15 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the Contractor, (3) prolongation of the initial Construction Contract time beyond the contract time, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency.

1.2.16 Providing assistance in the initial start-up, testing, adjusting or balancing, or operation of equipment or systems, or training personnel for operation or maintenance of equipment or system.

1.2.17 Providing design services relating to future facilities, systems and equipment which are not intended to be constructed or operated as a part of the Project.

1.2.18 Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.

1.2.19 Providing other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER as described in Article 2. "OWNER'S RESPONSIBILITIES".

1.2.20 Providing Resident Project Representative services to give the OWNER more extensive on-site representation during the Construction Phase.

1.2.21 Notwithstanding the above, the OWNER will not be required to pay for any additional service that is occasioned by some fault, negligent act or omission of the ENGINEER.

Article 2. OWNER'S RESPONSIBILITIES

The OWNER shall:

- 2.1 Provide to the ENGINEER all criteria, design and construction standards and full information as to the OWNER'S requirements for the Project.
- 2.2 Designate in writing a person authorized to act as the OWNER'S representative. The OWNER or his representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER'S policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER'S services.
- 2.3 Furnish to the ENGINEER a complete land survey of the Project area.
- 2.4 Furnish soils data including but not limited to reports, test borings, test pits, probings, subsurface exploration, soil bearing values, percolation tests, ground corrosion and resistivity tests, all with appropriate professional interpretation.

- 2.5 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this **Project**.
- 2.6 Provide legal, accounting, and insurance counseling services necessary for the **Project**, legal review of the Construction Contract Documents, and such auditing services as the **OWNER** may require to account for expenditures of sums paid to the Contractor.
- 2.7 Furnish above services at the **OWNER'S** expense and in such manner that the **ENGINEER** may rely upon them in the performance of his services under this Agreement.
- 2.8 Obtain bids or proposals from contractors for work relating to this **Project** and bear all costs relating thereto.
- 2.9 Protect and preserve all survey stakes and markers placed at the **Project** site prior to the assumption of this responsibility by the Contractor and bear all costs of replacing stakes or markers damaged or removed during said time interval.
- 2.10 Guarantee full and free access for the **ENGINEER** to enter upon all property required for the performance of the **ENGINEER'S** services under this Agreement.
- 2.11 Give prompt written notice to the **ENGINEER** whenever the **OWNER** observes or otherwise becomes aware of any defect in the **Project** or other event which may substantially affect the **ENGINEER'S** performance of services under this Agreement.
- 2.12 Compensate the **ENGINEER** for services rendered under this Agreement.
- 2.13 The **OWNER'S** obligation to furnish the above items are to be extent the City reasonably determines that item is necessary for the **ENGINEER** to perform its work.

Article 3. DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct labor costs incurred by the **ENGINEER** directly attributable to the **Project** by the payment of the actual salaries and wages to the employees of the **ENGINEER**, but not including indirect payroll connected costs and other non-**Project** related costs.

Article 4. REIMBURSABLE EXPENSES

- 4.1 Reimbursable Expenses are in addition to compensation to the **ENGINEER** for Basic and Additional Services and include expenditures made by the **ENGINEER**, his employees or his consultants in the interest of the **Project**. Reimbursable Expenses include but are not limited to:
 - 4.1.1 Expense of transportation, subsistence and lodging when traveling in connection with the **Project**.
 - 4.1.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the **Project**.
 - 4.1.3 Expense of all reproduction, postage and handling of drawings, specifications, reports or other **Project**-related work product of the **ENGINEER**.
 - 4.1.4 When authorized in advance by the **OWNER**, expense of overtime work requiring higher than normal rates, and expense of preparing perspectives, renderings or models.

Article 5. PAYMENTS TO THE ENGINEER

- 5.1 Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days of the ENGINEER's submittal of his monthly statement. Past due amounts owed shall include a charge at the rate of interest allowed by state law from the forty-fifth (45th) day.
- 5.2 If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.
- 5.3 No deductions shall be made from the ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.
- 5.4 If the Project is delayed or if the ENGINEER's services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement.

Article 6. GENERAL PROVISIONS

6.1 Ownership of Documents

All Drawings, Specifications and other work product of the ENGINEER for this Project are instruments of service for this Project but becomes the property of the OWNER whether the Project is completed or not when OWNER pays for said work. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other Project without the written permission of the ENGINEER shall be at the OWNER'S risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any reuse or adaptation of the ENGINEER's instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amounts to be agreed upon by the OWNER and the ENGINEER.

6.2 Delegation of Duties

Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.

6.3 Miscellaneous

6.3.1 **Termination:** This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. See Exhibit A.

6.4 Extent of Agreement

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.

6.5 Governing Law

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the principal place of business of the ENGINEER.

6.6 General

6.6.1 Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

6.6.2 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

6.6.3 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6.6.4 The ENGINEER has not been retained or compensated to provide design or construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure. Omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.

6.6.5 The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.

6.6.6 Any Opinion of the Construction Cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such Opinions as compared to Contractor bids or actual cost to the OWNER.

Article 7. SPECIAL PROVISIONS

7.1 Insurance and Indemnity

The ENGINEER shall acquire and maintain statutory workmens' compensation insurance coverage employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage. The limits of the professional liability shall be \$250,000.00.

7.1.2 Contractor's Insurance

Prior to the commencement of the work, the OWNER shall require the Contractor and any subcontractors to submit evidence that he (they) have obtained for the period of the Construction Contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a combined single limit of not less than \$1,000,000.00 for all damages arising out of bodily injury, sickness or death or damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures. The OWNER reserves the right to require increased insurance amounts as OWNER reasonably determines appropriate during the course of this contract.

Included in such coverage will be contractual coverage sufficiently broad to insure the provision of Paragraph 7.1.4, "Indemnity". The comprehensive general liability insurance will include as additional named insured; the OWNER; the ENGINEER and each of their officers, agents and employees.

7.1.3 Builders Risk "All Risk" Insurance

Before commencement of the work, the OWNER will require that the Contractor and any sub-contractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project which is the subject of the Construction Contract. Such insurance shall include as additional names insured; the OWNER; the ENGINEER; and each of their officers, agents, employees and any other persons with an insurable interest as maybe designated by the OWNER.

Such insurance may have a deductible clause but not to exceed \$5,000, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.

7.1.4 Indemnity

The OWNER will require that any Contractor of sub-contractors performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (sub-contractor's) negligence in the performance of the work described in the construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

7.2 Construction Cost

7.2.1 When a fixed limit of Construction Cost is established as a condition of this Agreement, it shall be in writing signed by both the OWNER and ENGINEER and shall include a ten percent bidding contingency unless another amount is agreed upon in writing. When such fixed limit is established the ENGINEER shall be permitted to determine what materials, equipment, component systems, types of construction and alternative bid items are to be included in the Construction Contract Documents, and to make reasonable adjustments in the scope of the Project to bring it within the fixed limit. Acceptance by the OWNER of a revised Opinion of Construction Cost in excess of the fixed limit shall constitute a corresponding increase in the fixed limit of Construction Cost.

7.2.2 After completion of the Construction Contract Documents Phase, if the bidding or negotiating phase does not commence within six months, any fixed limit of the Construction Cost shall be adjusted to reflect general construction industry price level increases occurring between the date of ENGINEER's submittal to the OWNER of the final Construction Contract Document and the date on which bids or proposals are sought.

7.2.3 If the lowest bona fide bid or the ENGINEER's Opinion of the Construction Cost exceeds such fixed limit of Construction Cost (including the bidding contingency) established as a condition of this Agreement, the OWNER shall (1) give written approval for an increase in such fixed limit, (2) authorize re-bidding within a reasonable time, or (3) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (3) the ENGINEER, without additional charge, shall modify the Construction Contract Documents, as the ENGINEER deems necessary, to bring the Construction Cost within the fixed limit. The providing of this service once shall be the limit of the ENGINEER's responsibility in this regard, and having so performed this service the ENGINEER shall be entitled to his compensation in accordance with this Agreement.

7.3 **Resident Project Representative**

7.3.1 If requested by the OWNER or recommended by the ENGINEER and approved in writing by the OWNER, the ENGINEER shall provide one or more full time resident Project representatives to assist the ENGINEER in order to render more extensive representation at the Project site during the construction phase. Such resident construction review services shall be paid for by the OWNER as additional services as defined within this Agreement. The limits of the authority, duties and responsibilities of a resident Project representative shall be described before such services begin by written instruments and made a part of this Agreement.

7.3.2 By means of the more extensive on-site observations of the work in progress, the ENGINEER will endeavor to provide further protection for the OWNER against defects and deficiencies in the contractor's work, but the furnishing of such services shall not include construction review of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and the ENGINEER shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.

7.4 **Limitation of Liability**

The OWNER agrees to limit the ENGINEER's liability to the OWNER and to all Construction Contractors and Subcontractors on the PROJECT, due to the ENGINEER's professional negligent acts, errors or omissions, such that the total aggregate liability of the ENGINEER to those named shall not exceed Two Hundred Fifty Thousand (\$250,000.00) dollars or the ENGINEER's total fee for services rendered on this PROJECT, whichever is greater.

7.5 **Responsible Professional Engineer**

Primary responsibility for these services will be assigned to Jerry L. Tullos, P.E., Registration No. 6175.

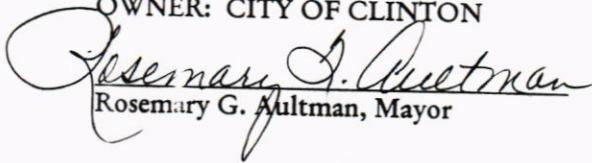
7.6 **Special Provisions and Regulations Stipulated by HUD and CDBG**

See applicable portions of Exhibit A.

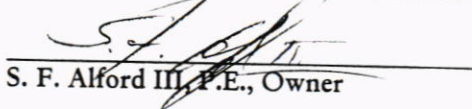
PART IV: ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized representatives on the day and year first above written.

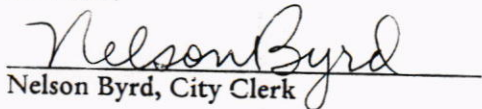
OWNER: CITY OF CLINTON


Rosemary G. Aultman, Mayor

ENGINEER: ALFORD ENGINEERING


S. F. Alford III, P.E., Owner

ATTEST:


Nelson Byrd, City Clerk

ATTEST:


Jerry L. Tullos, P. E.

EXHIBIT "A"

SPECIAL PROVISIONS AND REGULATIONS STIPULATED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

For the purpose of clarification, the Contracted Party shall refer to the providing professional services to the Grantee as specified in the contract to which this document is attached.

1. Access of Grantee, State of Mississippi, HUD and Others to CDBG Documents, Papers and Books

The Contracted Party agrees to allow the Grantee, State of Mississippi, HUD, the Comptroller General of the United States, and any of their duly authorized representatives, access to any books, documents, papers and records of the Contracted Party which are directly pertinent to the CDBG Program for the purpose of making audits, examinations, excerpts and transcriptions.

2. Termination of Contract for Cause

If, through any cause, the Contracted Party shall fail to fulfill, in timely and proper manner, his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements or stipulations of this Contract, the Grantee shall thereupon have the right to terminate this Contract by giving written notice to the Contracted Party of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies and reports prepared by the Contracted Party shall entitle the Contracted Party's receipt of just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contracted Party shall not be relieved of liability to the Grantee for damages sustained or the Grantee by virtue of any breach of the Contract by the Contracted Party. The Owner may withhold any payments to the Contracted Party for the purpose of set off until such time as the exact amount of damages due the Grantee from the Contracted Party is determined.

3. Termination for Convenience of the Grantee

The Grantee may terminate this Contract any time by a notice in writing from the Grantee to the Contracted Party. If the Contract is terminated by the Owner as provided herein, the Contracted Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contracted Party covered by this Contract, less payments of compensation previously made provided that if less than sixty percent (60%) of the services covered by this Contract have been performed upon the effective date of such termination, the Contracted Party shall be reimbursed (in addition to the above payment) for that portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contracted Party during the Contract period which are directly attributable to the incomplete portion of the services covered by this Contract.

4. Records

All records required to be kept on the project shall be maintained for at least three (3) years after final payments and until all pending matters under the grant are closed.

5. **Health and Safety Standards**

All parties participating in this project agree to comply with Section 107 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable in construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market or contracts for transportation.

6. **Environmental Compliance**

Contracts, subcontracts and subgrants or amounts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR, 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grant agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329).

7. **Energy Efficiency**

All participants in the projects shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

8. **Changes**

The Grantee may, from time to time, request changes in the scope of the services of the Contracted Party to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contracted Party's compensation which are mutually agreed upon by and between the Grantee and the Contracted Party, shall be incorporated in written amendments to this Contract.

9. **Personnel**

The Contracted Party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Grantee.

All the services required hereunder will be performed by the Contracted Party or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

10. **Anti-Kickback Rules**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Engineer shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by the subcontractors with such regulations and shall be responsible for the submission

of affidavits required of subcontractors thereunder except as the Secretary of labor may specifically provide for variations of or exemptions from the requirements thereof.

11. Withholding of Salaries

If, in the performance of this Contract, there is any underpayment of salaries by the Contracted Party or by any subcontracted thereunder, the Grantee shall withhold from the Contracted Party out of payment due to him an amount sufficient to pay to employees underpaid the difference between the salaries required thereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Grantee for and on account of the contracted party or subcontractor to the respective employees to whom they are due.

12. Claims and Disputes Pertaining to Salary Rates

Claims and disputes pertaining to salary rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contracted Party to the Grantee for the latter's decision which shall be the final with respect thereto.

13. Equal Employment Opportunity

During the performance of this Contract, the Contracted Party agrees to comply with Executive Order 11246, and the regulations issues pursuant thereto (24 CFR 130 and 41 CFR, Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally-assisted construction contracts, contractors and subcontractor on Federal and Federally-assisted construction contracts shall take affirmative action to ensure fair treatment in employments, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay other forms of compensation and selection for training apprenticeship.

14. Anti-Discrimination Clauses

The Contracted Party will comply with the following clauses:

- A. Title VI of the Civil Rights Act of 1964 (PL 88-352) and the regulations issues pursuant thereto (24 CFR 1) which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- B. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing and the provision of brokerage services; and
- C. Executive Order 11063, as amended by Executive Order 11259, on equal opportunity in housing and non-discrimination in the sale or rental of housing built with Federal assistance.

Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (U.S.C. 6101, et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (U.S.C. 796) shall also apply to any such program or activity.

15. Section 3 Clause

The Contracted Party will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 17010) requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project area be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

16. Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted, or caused to be instituted, any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

17. Compliance with Local Laws

The Contracted Party shall comply with all applicable laws, ordinances and codes of the state and local governments and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

18. Subcontracting

None of the services covered by this Contract shall be subcontracted without prior written consent of the Grantee. The Contracted Party shall be as fully responsible to the Grantee for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him. The Contracted Party shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

19. Assignability

The Contracted Party shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Grantee provided that claims for money due or to become due the Contracted Party from the Grantee under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

20. Interest of Members of Local Public Agency and Others

The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is, or give the appearance of being motivated by, a desire for private gain for themselves or others, particularly those with whom they have a family, business or other tie.

The Contracted Party will comply with Section 21-39-1, Mississippi Code Annotated (1972), which prohibits municipal officers and employees from having or owning any interest or share, individually or

as agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Contracted Party will also be aware of and avoid any violation of Section 97-11-19, Mississippi Code Annotated (Supp. 1982), which prescribes a criminal penalty for any public officer who has an interest in any contract passed by the board of which he is a member during the term he was a member and for one (1) year thereafter.

21. **Interest of Certain Federal Officers**

No member of or delegate to the Congress of the United States and no Resident Commissioner, shall be admitted any share or part of this contract or to any benefit to arise therefrom.

22. **Interest of Contractor**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

23. **Political Activity**

The Contracted Party will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.) which limits the political activity of employees.

24. **Davis-Bacon Act Requirements**

The Contracted Party will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276-a5, and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.

25. **Uniform Act Requirements**

The Contracted Party will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-1.

26. **Lead-Based Paint Requirements**

The Contracted Party will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.

27. **Compliance with Office of Management and Budget**

The parties agree to comply with the regulations, policies, guidelines and requirements of the Office of Management and Budget, Circulars A-95, A-102 and A-54, as they relate to the use of Federal funds under this contract.

28. **Flood Insurance Purchase Requirements**

Both parties agree to comply with the flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975), approved December 31, 1976, Section 102(a), requires on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, "Federal financial assistance", includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

29. **Historic Preservation**

Both parties agree to assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 USC 469a-1 et seq.) by: (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity and notifying the Federal grantor agency of the existence of any such properties; and by (b) complying with all requirements established by the Federal grantor and the state grantor agency to avoid or mitigate adverse effects upon such properties.

30. **Program Monitoring**

Both parties agree to assist and cooperate with the Federal grantor agency and the state grantor agency or their duly designated representatives in the monitoring of the project or projects to which this agent relates, and to provide in form and manner approved by the state grantor agency such monitoring reports, progress reports and the like as may be required and to provide such reports at the times specified.

31. **Discrimination Due to Beliefs**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

32. **Confidential Findings**

All of the reports, information, data, etc. prepared or assembled by the Contracted Party under this Contract are confidential and the Contracted Party agrees that they shall not be made available to any individual or organization without prior written approval of the Grantee.

33. Third-Party Contracts

The Grantee shall include in all contracts with Participating Parties receiving grant funds provisions requiring the following:

- A. Each such Participating Party keeps and maintains books, records and other documents relating directly to the receipt and disbursement of such grant funds; and
- B. Any duly authorized representative of the Mississippi Department of Economic and Community Development, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit and examine all such books, records and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

The Grantee shall include in all contracts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of the Mississippi Department of Economic and Community Development, the U.S. Department of Housing and Urban Development and the Comptroller General of the United States shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all close-out procedures respecting this grant.

CONTRACT OF EMPLOYMENT

THIS CONTRACT was made and entered into by and between the CITY OF CLINTON organized and existing under the laws of the State of Mississippi, and PYLE, DREHER, MILLS & DYE, Attorneys at Law, located in Jackson, Mississippi, engaged in the general practice of law, pursuant to Notice to Proceed on legal work received by said Attorney, dated the 3RD day of Nov., 1998.

W I T N E S S E T H:

1. Pyle, Dreher, Mills & Dye, Attorneys at Law, hereinafter called Attorney, hereby agrees to perform general legal work at the rate of \$75.00 per hour plus expenses for out of Court work, not to exceed the total sum of \$8,551.00 on the City of Clinton CDBG Project (Project No.8-147-PF-01) except in the event that the work performed justifies that the charges be greater than \$8,551.00 and subject to an increase in this ceiling being approved by the City.

2. Attorney hereby agrees to perform legal work such as preparation of contracts, agreements, and other documents to be provided by the City, review of documents and contracts, title work, and providing other legal opinions in the connection with CDBG Project referenced above.

3. It is understood by and between the parties hereto that, in the event that it becomes necessary at any time during the administration of the aforesaid CDBG Project for Court proceedings, the City shall compensate Attorney at a rate of

864 - 870

Seventy Five dollars (\$75.00) per hour. Furthermore, it is understood and agreed that any charges arising from Court proceedings are to be completely separate from and additional to the charges for general administrative legal work, title work, and closing work described in Paragraph 1.

4. All contracts, documents, and other work materials prepared by Attorney in furnishing the services set forth hereinabove shall be confidential and the property of the City and they shall not be made available to any individual or organization without prior written approval of the City.

5. Services provided under this contract by Attorney shall continue as long as mutually agreeable to the parties hereto or until the Project is closed.

6. In the event that Attorney fails to fulfill in a timely and proper manner his obligations under this contract, or if Attorney shall violate any of the covenants, agreements, or stipulations of this contract, the City, thereupon shall have the right to terminate this contract by giving written notice to Attorney of such termination thirty (30) days before the effective date thereof. In that event, the City shall pay on the effective date of termination for all then unpaid services performed by Attorney. In the event of such termination, Attorney shall forward to the City, his final bill not later than seven (7) days before the termination date, and, if there are any questions by the City, it shall contact Attorney not later than three (3) days before the termination date so that any question may be resolved.

7. Attorney may terminate this contract at any time by giving written notice to the City, of such termination at least thirty (30) days before the effective date thereof. As hereinabove said, the last bill of the Attorney shall be paid in accordance with the terms of the preceding paragraph.

8. Either party to this contract may request changes in the terms of this agreement by deletion or addition. Such changes must be agreed to by all parties in writing before they become effective.

9. Attorney shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this contract.

10. Attorney shall not subcontract any of the services covered by this Contract without prior consent of the City. The attorney shall be as fully responsible to the City for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him. The attorney shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

11. Attorney will not discriminate against any employee, applicant for employment, or program participant because of race, religion, sex, color, national origin, or political affiliation or belief. Further, Attorney will take affirmative action to insure that applicants are employed and that employees are treated during employment equally without regard to their race, religion, sex, color, or national origin.

12. Attorney shall keep in force records and submit such reports concerning racial and ethnic origin of applicants for employment as the City, may require.

13. Attorney agrees to establish safeguards to prohibit employees from using positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.

14. Attorney will comply with Section 21-39-1, Mississippi Code Annotated(1972), which prohibits municipal officers and employees from having or owning any interest or share, individually or as an agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefrom or connected therewith.

15. Attorney will also be aware of and avoid any violation of Section 97-11-19, Mississippi Code Annotated (Supp. 1982), which prescribes a criminal penalty for any public officer who has an interest in any contract passed by the board of which he is a member during the term he was a member and for one year thereafter.

16. Neither party to this contract shall have the right to assign any interest or part thereof without the express prior written consent of the other party.

17. Attorney covenants to the City, that he has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of said services as required hereunder. Further, Attorney covenants that in the performance of this contract no other person shall be employed by it which may have any direct or indirect interest in this project.

18. There shall exist between Attorney and the City, an Attorney-client relationship wherein all communications, data, documents, and other things shall remain in strictest confidence between the parties to this contract and may not be revealed by either party without prior written consent of the other party.

19. No members of or delegates to the Congress of the United States of America, and no resident Commissioner shall be admitted to any share or part hereof or to any other benefit arising therefrom.

20. At any time during normal business hours and as often as the City, State of Mississippi, HUD, the Comptroller General of

the United States, or any other Governmental entity or agent thereof, may deem necessary, there shall be available to all of the aforesaid for examination of all of its records with respect to all matters covered by this contract and will permit all of the aforesaid possible agencies or entities to audit, examine, and make excerpts or transcripts from such records and to make audits for all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, or other data relating to any matters covered by this contract until the completion of all close-out procedures in respect to this grant and the final settlement and conclusion of all issues arising out of this grant. Records related to this project will be retained three (3) years after close-out of project.

21. Attorney and City agree to assist and cooperate with the Federal grantor agency and the state grantor agency or their duly designated representatives in the monitoring of the project of projects to which this grant relates, and to provide in form and manner approved by the state grantor agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

22. Attorney will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

IN WITNESS WHEREOF the parties hereto have executed this contract, in duplicate, on the date first above written.

ATTEST:

CITY OF CLINTON, MISSISSIPPI

Nelson Byrd BY: Rosemary J. Aultman

PYLE, DREHER, MILLS & DYE, ATTORNEYS AT LAW

WITNESS:

Peggy C. Wells BY: Peggy C. Wells